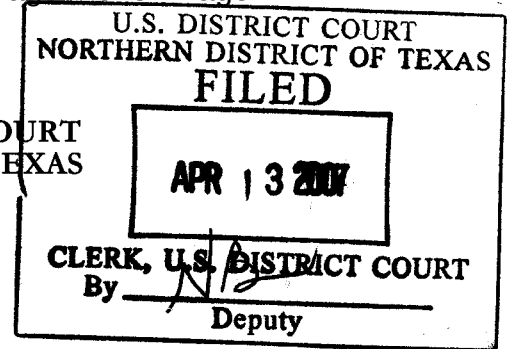


10
ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION



VICKI M. OTTS

VS.

COLONIAL CREDIT CORPORATION
WOLPOFF & ABRAMSON LLP

10525
CIVIL ACTION NO.

3-07 CV 0641-D

COMPLAINT

JURISDICTION

1. The jurisdiction of this Court attains pursuant to 15 U.S.C. §1692 et seq, the Fair Debt Collection Practices Act ("FDCPA") for which jurisdiction is proper in this Court. 15 U.S.C. §1692k(d) and state law claims supplemental thereto. Venue lies in the Dallas Division of the Northern District of Texas since Plaintiff's claims arose from acts of the Defendant perpetrated therein.

PARTIES

2. Plaintiff, Vicki M. Otts, is a natural person who resides in Tarrant County, Texas and is a "consumer" as defined by 15 U.S.C. §1692a(3) of the FDCPA. Plaintiff is a resident and citizen of the State of Texas.

3. Defendant, Colonial Credit Corporation is a corporation organized under the laws of the District of Columbia, and may be served with process by serving its registered agent for service of process: CT Corporation System, 350 N. St. Paul St., Dallas, Texas 75201.

4. Defendant, Wolpoff & Abramson, LLP, is a limited liability partnership, organized under the laws of the State of Delaware, registered to conduct business in Texas, and may be served with process by serving its registered agent: CT Corporations System, 350 N. St. Paul St., Dallas, Texas 75201. Defendant has an office in Texas.

FACTUAL ALLEGATIONS

5. Plaintiff is an individual consumer as defined by 15 U.S.C. §1692a(3).
6. Defendants Colonial Credit Corporation and Wolpoff & Abramson, LLP are debt

collectors as defined by the FDCPA and the Texas Debt Collection Practices Act.

7. Defendants filed an arbitration action against Plaintiff with the National Arbitration Forum for a debt allegedly arising from a credit card account with MBNA, now allegedly assigned or sold to Colonial Credit Corporation.

8. Defendants have failed to produce an arbitration agreement or any agreement whatsoever concerning the alleged debt which covers the debt sued upon.

9. Any debt which might be owed is barred by the statute of limitations.

CAUSES OF ACTION

COUNT I

10. Plaintiff realleges and incorporates paragraphs 1 through 9 above as if fully set out herein.

11. Colonial Credit Corporation and Wolpoff & Abramson, LLP are debt collectors as defined by the Fair Debt Collection Practices Act, 15 U.S.C. §1692a(6).

12. The conduct described above constitute clear violations of the Fair Debt Collection Practices Act, 15 U.S.C. §1692 et seq and 1692e(2)(A), by falsely representing the character, amount or legal status of any debt.

13. Defendants Colonial Credit Corporation and Wolpoff & Abramson, LLP have violated 15 U.S.C. §1692e(2)(B)(5) by threatening to take any action that cannot legally be taken or that is not intended to be taken.

14. Defendants Colonial Credit Corporation and Wolpoff & Abramson, LLP have violated 15 U.S.C. §1692g by failing to validate the debt despite a written request by Plaintiff.

15. Defendants Colonial Credit Corporation and Wolpoff & Abramson, LLP have violated 15 U.S.C. §1692f(1) by the collection of any amount (including any interest, fee, charge or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.

COUNT II

16. Plaintiff realleges and incorporated paragraphs 1 through 15 above as if fully set out herein.

17. A justiciable controversy exists between Plaintiff and Defendants concerning whether, first, there is a contract between MBNA and Plaintiff and, secondly, whether the contract has an arbitration clause. The defendants have not produced a contract in the arbitration proceeding. Plaintiff alleges that the Federal Arbitration Act prevents Defendants from proceeding with an arbitration absent a valid contract with an arbitration clause. Pursuant to 28 U.S.C. § 2201, Plaintiff seeks a declaration from this Court that the Defendants are barred by law from proceeding any further with the arbitration proceeding until they produce a valid agreement which has an arbitration clause and that the arbitration proceeding, File No. FA0611000832598, Colonial Credit Corporation, Assignee of MBNA America Bank vs. Vicki Otts. There is also an issue of standing; Colonial Credit Corporation has not shown any document trail of assignment or sale of the account from MBNA to Colonial Credit Corporation.

18. Section 4 of the Federal Arbitration Act empowers courts to compel arbitration of disputes only "upon being satisfied that the making of the arbitration agreement is not in issue." 9 U.S.C. § 4. Although required by law and by the Rules of National Arbitration Forum, no contract of any kind has been produced in the arbitration proceeding.

COUNT III

19. Plaintiff realleges and incorporates paragraphs 1 through 18 above.

20. Pursuant to Tex. Fin. Code § 392.404, the Defendant's violations of the Texas Debt Collection Practices Act also constitute a deceptive trade practice, Subchapter E, Chapter 17, Business and Commerce Code ("DTPA"), and is actionable under that chapter.

21. The foregoing acts and omissions were undertaken on behalf of the Defendant by its respective officers, agents, or employees acting at all times relevant hereto within the scope of that

relationship.

22. The foregoing acts and omissions of the Defendants were undertaken wilfully, intentionally, knowingly, and/or in gross disregard of the rights of the Plaintiff.

23. The foregoing acts and omissions of the Defendants were undertaken indiscriminately and persistently, as part of its regular and routine collection efforts, and without regard to or consideration of the identity of rights of the Plaintiff.

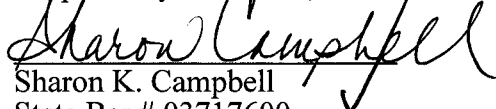
18. By reason of the allegations in this petition, the Texas Debt Collection Practices Act and Fair Debt Collection Practices Act, , Plaintiff is entitled to recover attorney's fees in a sum that is reasonable in relation to the amount of work expended for which Plaintiff sues herein. The attorney whose name is subscribed to this pleading has been employed to assist Plaintiff in the prosecution of this action.

Prayer for Relief

WHEREFORE, the Plaintiff prays that this Court:

1. Declare that Defendants' actions violate the FDCPA and TDCPA; that the arbitration should not proceed due to lack of arbitration agreement; that the debt is barred by limitations and that Colonial Credit Corporation lacks standing.
2. Enter judgment in favor of Plaintiff and against each Defendant for statutory damages, actual damages, costs, and reasonable attorney fees as provided by 15 U.S.C. §1692k(a) and/or Tex. Fin.Code Ann. §392.403.
3. Grant such further relief as deemed just.

Respectfully submitted,



Sharon K. Campbell
State Bar # 03717600
Premier Place, Suite 1040
5910 North Central Expressway
Dallas, Texas 75206
Telephone: 214/351-3260
Fax: 214/739-0151
Sharon@SharonKCampbell.com

CIVIL COVER SHEET

I. (a) PLAINTIFFS

VICKI M OTTS

DEFENDANTS

Colonial Credit Corporation
Wolpoff & Abramson, LLP

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

(c) Attorney's (Firm Name, Address, and Telephone Number) Sharon Campbell,
5900 N. Central Expressway, Suite 1040
Dallas, TX 75206/214 357 3260/214 739 0151

Attorneys (If Known)

APR 13 2007

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff
(For Diversity Cases Only) **CLERK, U.S. DISTRICT COURT** and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|--|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated <i>or</i> Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated <i>and</i> Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT		TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	
REAL PROPERTY		CIVIL RIGHTS	PRISONER PETITIONS	LABOR	SOCIAL SECURITY	FEDERAL TAX SUITS
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609		

V. ORIGIN

- 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Fair Debt Collection Practices Act

Brief description of cause:
Defendants brought arbitration on time-barred debt

VII. REQUESTED IN COMPLAINT:

- ☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S)

PENDING OR CLOSED (See instructions): **JUDGE**

DOCKET NUMBER

DATE _____

SIGNATURE OF ATTORNEY OF RECORD

4-10-07

SIGNATURE OF ATTORNEY OF RECORD
Sharon Campbell

FOR OFFICE USE ONLY

RECEIPT #	AMOUNT	APPLYING IFP	JUDGE	MAG. JUDGE
1	100.00			
2	200.00			
3	300.00			
4	400.00			
5	500.00			
6	600.00			
7	700.00			
8	800.00			
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14	1400.00			
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90	9000.00			
91	9100.00			
92	9200.00			
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94	9400.00			